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STATUTORY INSTRUMENTS

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**2023 No. 786**

**The Criminal Procedure (Amendment No. 2) Rules 2023**

**Amendments to the Criminal Procedure Rules**

**13. In Part 31 (Behaviour orders)—**

(a) in rule 31.1 (When this Part applies) for paragraphs (1) and (2) substitute—

“(1) This Part applies where a magistrates’ court or the Crown Court can—

(a) make, vary, renew, discharge or revoke a civil order—

(i) as well as, or instead of, passing a sentence, or in any other circumstances in which other legislation allows the court to make such an order, and

(ii) that requires the defendant to do, or not do, something; or

(b) require a person to enter into a recognisance—

(i) to keep the peace and be of good behaviour, or

(ii) (in the Crown Court only) to come up for judgment if called on.

(2) In this Part—

(a) ‘behaviour order’ means an order to which paragraph (1)(a) refers; and

(b) ‘bind over’ means a requirement to which paragraph (1)(b) refers.”;

(b) in the note to rule 31.1 (When this Part applies)—

(i) in the opening words after “Acts listed” insert “beneath”,

(ii) renumber sub-paragraph (a)(xiii) of the first paragraph as (a)(xiv),

(iii) after sub-paragraph (a)(xii) of the first paragraph insert—

“(xiii) *section 376 of the 2020 Act*(1)*(requirement for parent or guardian of convicted young defendant to take proper care of the defendant and exercise proper control),*”,

(iv) after sub-paragraph (a)(xiv) of the first paragraph, as renumbered by paragraph (b)

(ii) of this rule, insert—

“(xv) *section 20(2) of the Public Order Act 2023*(2)*(serious disruption prevention orders);*”, and

(v) after the first paragraph insert—

“*Under section 1 of the Justices of the Peace Act 1361*(3)*, section 1(7) of the Justices of the Peace Act 1968*(4)*and the inherent powers recognised by those provisions a magistrates’ court or the Crown Court can bind over to keep the peace and be of good behaviour a person who or whose case is before the court, by requiring that person to enter into a recognisance (a formal undertaking to pay a specified sum in the event of failure to comply), or to give a surety, or both.*

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(1) 2020 c. 17.

(2) 2023 c. 15; section 20 comes into force on a date to be appointed.

(3) 1361 c. 1.

(4) 1968 c. 69.

*Under section 79 of the Senior Courts Act 1981(5) the Crown Court can release a convicted defendant pending sentence on a recognisance to come up for judgment if called on and meanwhile to be of good behaviour.”;*

- (c) in rule 31.2 (Behaviour orders: general rules)—
- (i) for the heading to the rule substitute “Behaviour orders and bind overs: general rules”,
  - (ii) in paragraph (1) after “make a behaviour order” insert “or impose a bind over”, and
  - (iii) in paragraph (2)(a)(ii) for “7 days” substitute “5 business days”;
- (d) in rule 31.3 (Application for behaviour order and notice of terms of proposed order: special rules)—
- (i) at the end of paragraph (1)(a)(v) omit “or”,
  - (ii) at the end of paragraph (1)(a)(vi) insert “or”,
  - (iii) after paragraph (1)(a)(vi) insert—
    - “(vii) a serious disruption prevention order;”, and
  - (iv) at the end of paragraph (1)(c) for “and” substitute “or”;
- (e) in rule 31.5 (Application to vary, renew, discharge or revoke behaviour order)—
- (i) for paragraph (2)(a) substitute—
    - “(a) apply as soon as practicable after becoming aware of the grounds for doing so, explaining—
      - (i) why the order should be varied, renewed, discharged or revoked, as the case may be, by reference to the legislation under which it was made, and
      - (ii) what, if any, material circumstances have changed since the court made the order or last determined an application to vary, renew, discharge or revoke it;”
    - (ii) renumber paragraph (2)(b) to (d) as (2)(c) to (e) respectively,
    - (iii) after paragraph (2)(a) insert—
      - “(b) where the application is a second or subsequent application by the applicant in respect of the same order—
        - (i) give details of each previous application, and
        - (ii) if the applicant wants the court to decide the application at a hearing, explain why;”,
    - (iv) for paragraph (4)(b) substitute—
      - “(b) without a hearing, if—
        - (i) the legislation under which the order was made so allows, or
        - (ii) the court considers the application to be an abuse of the court’s process.”;
    - (v) in paragraph (5)(a) omit “at a hearing (whether or not the applicant in fact attends)”, and
    - (vi) in paragraph (5)(b) omit “if none is otherwise required”;
  - (f) renumber rule 31.9 (Court’s power to vary requirements under this Part) as rule 31.12;

- (g) renumber rule 31.10 (Notice to supervisor of requirement for supervision or monitoring) as rule 31.9;
- (h) in rule 31.9 as thus renumbered, in the second paragraph of the note to the rule after the first sentence insert “Under section 23 of the Public Order Act 2023(6) a serious disruption prevention order which imposes a requirement other than a notification requirement under section 24 of that Act(7) must similarly specify a supervisor.”;
- (i) after rule 31.9 as thus renumbered insert—

**“Bind over: exercise of court’s powers**

**31.10.**—(1) Where the court can impose a bind over—

- (a) the court must decide, in this sequence—
  - (i) whether or not to do so and if so in what terms, and then
  - (ii) the amount of the recognisance to require; and
- (b) the court may exercise its powers—
  - (i) on application or on the court’s own initiative, and
  - (ii) at a hearing in public, as a general rule, or, in exceptional circumstances, in private.

(2) Before imposing a bind over the court must—

- (a) take into account, as well as any representations under rule 31.2 (Behaviour orders and bind overs: general rules)—
  - (i) any evidence introduced, and
  - (ii) any admission made; and
- (b) satisfy itself so that it is sure that the criteria for the bind over are met.

(3) Before deciding the amount of any recognisance to require the court must take into account, as well as any representations under rule 31.2, such information as is readily available about the financial circumstances of the person to be bound over.

(4) As a general rule the court must not impose a bind over for more than 12 months.

(5) If the court decides to impose a bind over—

- (a) the court must explain, in terms the person to be bound over can understand (with help if necessary)—
  - (i) the effect of the court’s decision,
  - (ii) the consequences of refusing to enter into a recognisance,
  - (iii) the consequences of breaching the bind over, and
  - (iv) the possibility of appeal; and
- (b) the court must announce its decision and reasons at a hearing in public.

(6) A bind over must be in writing and must—

- (a) describe in ordinary language the conduct from which the person to be bound over must refrain;
- (b) specify the amount of the recognisance;
- (c) specify the duration of the bind over; and

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(6) 2023 c. 15; section 23 comes into force on a date to be appointed.

(7) 2023 c. 15; section 24 comes into force on a date to be appointed.

- (d) identify any surety who is not the person to be bound over.
- (7) If the Crown Court requires the person to be bound over to come up for judgment, the bind over also must specify—
  - (a) any date on which, and place and time at which, that person must attend court; or
  - (b) the means by which that person will be given notice of such a date, place and time.
- (8) The court officer must serve the bind over as soon as practicable—
  - (a) in every case, on the person bound by it; and
  - (b) as applicable, on each party or other party.

*[Note. Under section 1 of the Justices of the Peace Act 1361, section 1(7) of the Justices of the Peace Act 1968 and the inherent powers recognised by those provisions, before imposing a bind over the court must be satisfied that—*

- (a) *a breach of the peace involving violence or a threat of immediate violence has occurred; or*
- (b) *there is a real risk of violence in the future perpetrated by—*
  - (i) *the person to be bound over; or*
  - (ii) *another person as a natural consequence of the conduct of the person to be bound over.]*

#### **Bind over: refusal or breach**

**31.11.**—(1) Where a person to be bound over refuses to enter into a recognisance, the court must—

- (a) consider such other steps as may be available, for example continuing or starting a prosecution; and
- (b) treat committal to custody as a last resort.

(2) Where a person bound over is alleged to have breached a requirement, before the court forfeits the recognisance it must satisfy itself on the balance of probabilities that a breach has occurred.

(3) In addition to paragraph (1) or (2), as applicable, before committing to custody or forfeiting a recognisance the court must follow the procedure required by rule 48.8 (contempt of court by obstruction, disruption, etc.; procedure on enquiry) as if—

- (a) the refusal or breach were a contempt of court; and
- (b) the committal or forfeiture were a punishment for such a contempt.

*[Note. Under section 1(7) of the Justices of the Peace Act 1968 if a person whom the court decides to bind over refuses to enter into a recognisance the court can commit that person to custody.*

*Payment of the sum due under a recognisance that is forfeit can be enforced under section 58 of the Magistrates' Courts Act 1980(8).]*" and

- (j) amend the table of contents correspondingly.

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(8) 1980 c. 43; section 58 was amended by section 17 of, and paragraphs 39 and 40 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22).